

February 18, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure; GN Docket No. 13-5, Technology Transitions Policy Task Force Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On February 14, 2013, Harold Feld, Senior Vice President, and Jodie Griffin, Staff Attorney, of Public Knowledge (PK) met with Alex Hoehn-Saric, Policy Director, and Priscilla Delgado Argeris, Legal Advisor, in Commissioner Rosenworcel's office. Afterward Mr. Feld had a separate conversation with Commissioner Rosenworcel covering the same topics.

### **The Five Fundamentals**

Public Knowledge urged the Commission to proceed with the PSTN transition by first establishing fundamental principles by which to guide the Commission's decision making throughout the transition. At this early stage, the Commission should not engage in simply arbitrating between the wish lists of the many parties that have submitted comments in this proceeding, which would serve no useful purpose and would in fact distract the Commission from its responsibility to guide this transition in a way that preserves a competitive, consumer-friendly market for voice services.

PK proposes that the Commission use the Five Fundamentals framework PK laid out in its Comments, ensuring that the post-transition phone network will still seek to provide service to all Americans, ensure interconnection and competition, protect consumers, guarantee network reliability, and provide key public safety capabilities.<sup>1</sup> These basic principles can be used to guide the Commission's actions going forward and serve as a checklist to evaluate specific proposals made by others. The comments submitted have already revealed how the PSTN transition will inevitably create unanticipated impacts on stakeholders, like federal aviation service providers,<sup>2</sup> users with disabilities,<sup>3</sup> and subscribers that in one way or another depend on

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<sup>1</sup> See Comments of Public Knowledge, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017160627>.

<sup>2</sup> See Comments of Harris Corporation, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013).

<sup>3</sup> See Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al., *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013).

alarm systems currently tied to the existing infrastructure.<sup>4</sup> As the transition continues to unfold, there will surely be more examples to come. The Commission will discover all kinds of communities and stakeholders that have relied upon the existing network and rules in particular ways that have until now flown under the radar, and the Commission must have a framework ready that can absorb those surprises.

### **A Notice of Inquiry**

PK urged the Commission to issue a broader Notice of Inquiry in this proceeding that adopts a principled framework for moving forward in the PSTN transition and provides a unifying docket for the many existing proceedings that bear on this issue. This would give all parties in the relevant proceeding certainty as to how the Commission will approach and handle the PSTN transition going forward. The Commission's framework would allow it to consider all of the potential consequences of each particular proposal and place that proposal within one coherent framework. For example, geolocation technology in mobile phones aids emergency response to 9-1-1 calls, but also impacts consumer privacy. Using a set of fundamental principles as a guide, the Commission could identify as many of the likely impacts of a new practice or rule as possible, and can thoughtfully and deliberately handle any trade-offs that are necessary.

The Commission could use a Notice of Inquiry to create coherence among the many complicated issues in these inter-related proceedings, and to establish that the basic principles by which the Commission will resolve issues will not vary or shift by proceeding. The Notice would focus the general discussion around the PSTN transition and recognize the other proceedings that have relevance to this issue. The Commission must also confirm that it plans to retain sufficient authority to ensure that calls are always completed, even after upgrades are made to the network.

A principled framework would also be able to handle unanticipated problems created during the transition to an IP-based network. For example, when the transition to IP led to rural call completion problems, the Commission responded by proposing reporting requirements to understand and solve the problem.<sup>5</sup> The Commission's motivation to take this problem so seriously is based on the fundamental premise that achieving service for all Americans is a top priority. Going forward, the Commission must continue to evaluate issues that arise in this transition according to the same fundamental principles. Which principles the Commission uses to frame its approach will guide how it responds to each particular issue that arises.

### **Comments of the Parties**

PK noted how the record reflects that not all carriers find themselves in the same position when face with the PSTN transition, and the differences often seem to be based on each carrier's relative market power and current technological infrastructure.

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<sup>4</sup> See Comments of AARP, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013).

<sup>5</sup> *Rural Call Completion*, Notice of Proposed Rulemaking, WC Docket No. 13-39 (rel. Feb. 7, 2013).

Verizon, for example, does not need additional § 214(a) authorization to replace its copper lines with fiber beyond the blanket license already the Commission has already granted for line upgrades, so long as it is not shutting off its TDM-based voice service.<sup>6</sup> Verizon has also sold away many of its rural lines so, unlike AT&T, it has less need for § 214(a) relief to substitute wireless for wireline service in rural areas.

For their part, the RLECs and Super RLECs have not supported complete deregulation because they have rural systems that need the regulatory structure of the current phone system in order to interconnect and operate. Unlike AT&T, these companies do not have the spectrum necessary to launch a rural wireless service to replace their current wireline service.

Comcast, however, is the only entity that has advocated for complete deregulation of the phone network.<sup>7</sup> This is a very scary proposal, especially coming from the most powerful entity in U.S. telecommunications, one of the largest providers of residential phone service, and the largest provider of residential broadband. Comcast is likely ready to rely on its own market power and use its own consumers as leverage to attempt to make sure the phone system operates well enough for Comcast alone. But Comcast must not be allowed to use this network upgrade to begin treating phone service like cable video service and standard IP interconnection. Unlike the broader Internet, the phone system does not operate through “best efforts” means, and it is not resilient enough to withstand Comcast’s games. Despite Comcast’s extreme deregulatory plea, the Commission must ensure that the phone system continues to work for everybody. The phone network is complex in a way that is unique from our Internet and video systems, and if it starts to break down for some it will break down for everyone. The Commission must ensure that the phone network continues to provide basic service that satisfies the Five Fundamentals mentioned above.

Even AT&T acknowledges that the phone network cannot be a regulation-free zone, but that AT&T’s proposed trials are not sufficiently defined to even consider at this point. Any experiment in the real world is going to impact the phone service of real people, and so before the Commission could move forward with a trial program it would need to know the program’s metrics, expected lessons, and criteria to determine when the trial must end. For example, a trial to establish technical criteria for § 214(a) authorizations could prove useful, but a trial that simply demonstrates AT&T’s ability to behave for two years in return for complete deregulation would not teach us anything. The Commission should also bring in state regulators to these conversations, as the local authorities and experts on the conditions in any particular local trial setting. The transition does not require the Commission to preempt state and local authority, and the Commission should not want to do so, unless it is prepared to handle the influx of interconnection issues, 9-1-1 administration, and consumer complaints that state and local governments process every day.

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<sup>6</sup> PK also noted that it is pleased to see the Commission refreshing the record in the copper retirement proceeding. *See Comment Sought on the Technological Transition of the Nation’s Communications Infrastructure*, Public Notice, WC Docket No. 12-353 (rel. Feb. 4, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7022117219>.

<sup>7</sup> *See Comments of Comcast Corporation, The Technological Transition of the Nation’s Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013).

In this proceeding, we have already seen many stakeholders come forward with their various wish lists for rules to include or not include in the post-transition PSTN regulatory structure. The Commission must now seize its opportunity to establish guiding principles for the duration of the transition and push for consensus.

Respectfully submitted,

/s/

Jodie Griffin

*Staff Attorney*

PUBLIC KNOWLEDGE